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July 13, 1984

Mr. Richard J. Moore
Alameda County Counsel
Fourth Floor, Administration Bldg.
1221 Oak Street
Oakland, CA 94612

Attention: Mr. James F. May
Senior Deputy County Counsel

Rule 467 -- Taxable Possessory Interests

Dear Mr. May:

In your letter of April 12, 1984 to Larry Augusta, you ask the meaning of Rule 467 in relation to a holdover tenant at the Oakland Airport. Briefly, Avis Rent-A-Car is in possession of taxable possessory interest at the airport. It was created by a license and concession agreement in July 1971. The term expired on December 31, 1973, and since that time Avis has continued in possession as a month-to-month tenant pursuant to paragraph 19 of the original agreement.

Rule 467 provides that possessory interests renewed, extended, subleased or assigned for any term shall be appraised at their full value as of the date of the renewal, extension or as of the date the sub-lessee or assignee obtains the right to occupancy or use of the property (emphasis added).

Avis contends that this rule does not apply because their holdover is not an extension, but is instead a "continuation" under California law. The distinction turns on whether or not notice is given and whether the tenant holdover in accordance with the terms of the lease. The term "continuation" is not mentioned in the rule nor is it present in Revenue and Taxation Code, section 61(b), which is amplified by the rule.

We disagree with the taxpayer's contention. Rule 467 was not drafted to conform to the subtleties of landlord and tenant case law. It was meant to give quick and clear guidance to the employees of the county assessor's office. Moreover,

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for purposes of property taxation, Rule 21(h) provides that "extended or renewed" means the lengthening of the term of possession of an agreement by mutual consent or by the exercise of an option by either party to the agreement. This rule, which became effective in February 1971, provides the definition of the later adopted terms in Rule 467. Either the holdover beyond the original term without objection by the Port or Avis, or by considering paragraph 19 of the agreement as an option, it is clear that the present tenancy of Avis is an extension as defined by Rule 21(h). We conclude that the Avis situation is clearly covered by Rule 467.

Secondarily, you ask whether this situation should be subject to monthly supplemental assessments. Our staff has received a few inquiries on similar holdover situations, but as yet has not formulated any general recommendation. We would agree that the applicable statutes provide no guidance on the question. It seems to us that your only choice is to follow the mandate of Revenue and Taxation Code, section 75.10 and then initiate action to resolve any and all of the difficulties that you may encounter.

Very truly yours,

James M. Williams
Tax Counsel

JMW:fr

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Legal Section